

REMARKS

Claims 8-13 will be pending after entry of this amendment. Claims 1-7 stand rejected. Claims 1-7 have been canceled. Claims 8-13 have been added.

Support for new claims 8-13 can be found in the specification, for example, on page 3, lines 15-34; page 4, lines 11-24; and in the originally filed claims.

Rejections under 35 U.S.C. § 112, first paragraph

Claims 1-7 stand rejected under 35 U.S.C. § 112, first paragraph, for failing to provide an adequate written description of the invention and for failing to enable the invention. Specifically, the Examiner stated that applicants should file evidence of a deposit. In addition, page 3 of the Office Action states:

If the deposits are made under the terms of the Budapest Treaty, then an affidavit or declaration by Applicant, or a statement by an attorney of record over his or her signature and registration number, stating that the specific biological materials have been deposited under the Budapest Treaty, that the biological materials will be irrevocably and without restriction or condition released to the public upon the issuance of a patent and that the biological materials will be replaced should they ever become non-viable, would satisfy the deposit requirements made herein.

Furthermore, the Examiner stated that applicants should amend the specification to include information regarding the deposit.

Applicants have provided evidence of their deposit, which was filed with the ATCC under the Budapest Treaty, in its originally filed application on page 3, lines 15-20 and on page 4, lines 11-16.

Applicants have searched 35 U.S.C., 37 C.F.R. and the M.P.E.P, and have found no support for the statement on page 3 of the Office Action that requires an affidavit or declaration by the applicant, or a statement by an attorney of record over his or her signature and registration

number. Applicants request that the Office specifically identify where support for such requirement exists.

It is applicants' position that the statements requested on page 3 of the Office Action are implicit in Budapest Treaty deposits. In fact, they are pre-requisites to making an ATCC deposit under the Budapest Treaty. Furthermore, it is applicants' position that there is no requirement that the statements be made in affidavit form or by an attorney over his or her signature and registration number. In order to further prosecution, applicants submit concurrently herewith Exhibits A and B. Exhibit A is a copy of the Budapest Treaty deposit receipt, which identifies: the deposit, the accession number of the deposit, the date the deposit was received, the depository, the address of the depository, the fact that the deposit was accepted, the fact that the deposit is viable, and the fact that the deposit will be maintained for a period of at least 30 years. Exhibit B is a copy of the two-page Budapest Treaty Deposit Form that applicants submitted to ATCC in order to make their deposit. Exhibit B states that the deposit will be released upon issuance of a patent, and that the deposit will be replaced if it becomes non-viable. Furthermore, according to M.P.E.P. § 2405, the ATCC is an acceptable International Depositary Authority (IDA) depository. Therefore, applicants submit that they have complied with the requirements for making biological deposits, as required by 37 C.F.R. §§ 1.801-1.809.

According to the Examiner's suggestion, applicants have amended the specification at page 4, lines 14-24, to include further information regarding their deposit. The specification as filed contained information regarding the depository, the accession number of the deposit, the date of deposit, and a description of the deposited material. The specification has been amended to include the address of the depository, and a more detailed description of the 120G8 antibody

and the hybridoma cell line from which it is derived. Applicants submit that the specification, as amended, complies with the requirements set forth in 37 C.F.R. § 1.809(d).

In addition, applicants submit that these amendments to the specification do not constitute new matter. First, the specification has been amended to include the ATCC's address. The specification as originally filed stated that the hybridoma was deposited as ATCC Accession No. PTA-4957. A person having ordinary skill in the art knows that ATCC stands for American Type Culture Collection. The address for the ATCC is publicly available. Also, the addition of the depository's address to an application after the filing date does not violate the prohibition against new matter. See M.P.E.P. § 2406.1. Second, the specification has been amended to identify the isotype of the 120G8 antibody. Support for this amendment can be found, for example, on page 10, lines 32-33 of the originally filed application. Third, the specification has been amended to identify information regarding generation of the hybridoma that was deposited as ATCC Accession No. PTA-4957. Support for this amendment can be found, for example, on page 7, line 5 of the originally filed application.

In conclusion, applicants submit that the specification and new claims 8-13 satisfy the requirements of 35 U.S.C. § 112, first paragraph. Accordingly, withdrawal of this rejection under 35 U.S.C. § 112, first paragraph, is respectfully requested.

Claims 1, 2, 6 and 7 stand rejected under 35 U.S.C. § 112, first paragraph, for failing to provide an adequate written description of the invention and for failing to enable the invention. Specifically, the Examiner stated that the specification does not provide sufficient description or enable every binding compound having the recited binding characteristics. In addition, the Examiner stated that claims 6 and 7, while being enabled for binding of 120G8 antibodies to

murine plasmacytoid dendritic cells, does not reasonably provide enablement for purifying or identifying plasmacytoid dendritic cells generally from any other animal species with a binding compound.

Claims 1-7 have been canceled so the rejection with respect to those claims is moot. Applicants submit that new claims 8-13 are free from this rejection. New claims 8-13 are not of the same scope as claims 1-2. In addition, new claims 12 and 13, which correspond to former claims 6 and 7, recite methods for either purifying or identifying murine plasmacytoid dendritic cells. New claims 12 and 13 also recite a step that includes the use of an antibody produced by the hybridoma cell line deposited as ATCC Accession No. PTA-4957, rather than the use of a binding compound.

In conclusion, applicants submit that new claims 8-13 satisfy the requirements of 35 U.S.C. § 112, first paragraph. Accordingly, withdrawal of this rejection under 35 U.S.C. § 112, first paragraph, is respectfully requested.

Rejections under 35 U.S.C. § 112, second paragraph

Claims 1-7 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Specifically, the Examiner stated that various parts of the claims lack antecedent basis.

Claims 1-7 have been canceled so the rejection with respect to those claims is moot. Applicants submit that new claims 8-13 are free from this rejection. New claims 8-13 have replaced occurrences of "the" with "a".

In conclusion, applicants submit that new claims 8-13 satisfy the requirements of 35 U.S.C. § 112, second paragraph. Accordingly, withdrawal of the rejection under 35 U.S.C. § 112, second paragraph, is respectfully requested.

CONCLUSION

Applicants submit that new claims 8-13 are adequately described, enabled, and are definite. Accordingly, reconsideration of the rejections and allowance of the claims at an early date are earnestly solicited.

If the undersigned can be of assistance in addressing issues to advance the application to allowance, please contact the undersigned at the number set forth below.

Respectfully submitted,



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